



38 CFR Parts 36 and 42

RIN 2900-AR79

Federal Civil Penalties Inflation Adjustment Act Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations to adjust for inflation the amount of civil monetary penalties that are within VA's jurisdiction. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Team, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-8862. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (Pub. L. 114-74, sec. 701, 129 Stat. 584, 599-600), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, sec. 5, 104 Stat. 890, 891-892), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The amended statute, codified in a note following 28 U.S.C. 2461, requires agencies to publish annual adjustments for inflation, based on the percentage change between the

Consumer Price Index (defined in the statute as the Consumer Price Index for all-urban consumers (CPI-U) published by the Department of Labor) for the month of October preceding the date of the adjustment and the prior year's October CPI-U. 28 U.S.C. 2461 note, secs. 4(a) and (b) and 5(b)(1). This rule implements the 2023 calendar year inflation adjustment amounts.

Under 38 U.S.C. 3710(g)(4)(B), VA is authorized to levy civil monetary penalties against private lenders that originate VA-guaranteed loans if a lender falsely certifies that they have complied with certain credit information and loan processing standards, as set forth by chapter 37, title 38 U.S.C. and part 36, title 38 CFR. Under section 3710(g)(4)(B), any lender who knowingly and willfully makes such a false certification shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed \$10,000, whichever is greater. VA implemented the penalty amount in 38 CFR 36.4340(k)(1)(i) and (k)(3). On December 15, 2022, the Office of Management and Budget (OMB) issued Circular M-23-05. This circular reflects that the October 2021 CPI-U was 276.589 and the October 2022 CPI-U was 298.012, resulting in an inflation adjustment multiplier of 1.07745. Accordingly, the calendar year 2023 inflation revision imposes an adjustment from \$25,076 to \$27,018.

Under 31 U.S.C. 3802, VA can impose monetary penalties against any person who makes, presents, or submits a claim or written statement to VA that the person knows or has reason to know is false, fictitious, or fraudulent, or who engages in other covered conduct. The statute permits, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each claim. 31 U.S.C. 3802(a)(1) and (2). VA implemented the penalty amount in

38 CFR 42.3(a)(1)(iv) and (b)(1)(ii). As previously noted, OMB Circular M-23-05 reflects an inflation adjustment multiplier of 1.07745. Therefore, the calendar year 2023 inflation revision imposes an adjustment from \$12,537 to \$13,508.

Accordingly, VA is revising 38 CFR 36.4340(k)(1)(i) and (3) and 38 CFR 42.3(a)(1)(iv) and (b)(1)(ii) to reflect the 2023 inflationary adjustments for civil monetary penalties assessed or enforced by VA.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for prior notice and public comment and to publish this rule with an immediate effective date. The statute requires agencies to make annual adjustments for inflation to the allowed amounts of civil monetary penalties “notwithstanding section 553 of title 5, United States Code.” 28 U.S.C. 2461 note, sec. 4(a) and (b). The penalty adjustments, and the methodology used to determine the adjustments, are set by the terms of the statute. VA has no discretion to make changes in those areas. Therefore, an opportunity for prior notice and public comment and a delayed effective date are unnecessary.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and

Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects

38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs-housing and community development, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 42

Administrative practice and procedure, Claims, Fraud, Penalties.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 20, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

*Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR parts 36 and 42 as set forth below:

PART 36 – LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

§ 36.4340 [Amended]

2. In § 36.4340, amend paragraphs (k)(1)(i) introductory text and (k)(3) by removing “\$25,067” and adding in its place “\$27,018”.

**PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL
REMEDIES ACT**

3. The authority citation for part 42 continues to read as follows:

Authority: Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, codified at 31 U.S.C. 3801–3812.

§ 42.3 [Amended]

4. In § 42.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing “\$12,537” and adding in its place “\$13,508”.

[FR Doc. 2022-28481 Filed: 1/5/2023 8:45 am; Publication Date: 1/6/2023]